

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

FILED - GR

October 5, 2007 12:09 PM

RONALD C. WESTON, SR., CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY: _____/_____

ADMINISTRATIVE ORDER RE:)
AMENDMENT TO LOCAL CRIMINAL) No. 07-143
RULE 32.2(h))
_____)

Under the authority of 28 U.S.C. § 2071 and Rule 57 of the Federal Rules of Criminal Procedure, the Court hereby amends Local criminal Rule 32.2(h) to read in its entirety as follows:

(h) Motions for departure or variance; sentencing memoranda - Not less than five (5) working days before the date set for sentencing, any party seeking an upward or downward departure under the Sentencing Guidelines or a variance based on the application of the factors set forth in 18 U.S.C. § 3553(a), or both, must file and serve a separate and clearly captioned motion seeking such relief. All sentencing memoranda, including memoranda in support of a motion for departure or variance, shall be filed by the same date. Copies of all motions and sentencing memoranda shall be served upon the probation officer.

The district judges of this Court adopted this amendment at a regular judges' meeting held on September 28, 2007. The amended rule shall take effect immediately upon the date of this Administrative Order, without prior notice to the public. The Clerk shall post a copy of this Administrative Order in each of the Court's divisional offices and shall provide a copy to this Court's Advisory Committee on Local Rules and the Committee on the United States Courts of the State Bar of Michigan. In addition, the Clerk shall post the amendment and commentary on the Court's website and provide notice thereof electronically to all members of the bar of this Court.

The public shall be entitled to comment on this amendment for a period of thirty days after its effective date. *See* 28 U.S.C. § 2071(e). All comments shall be directed to the Clerk of the Court at the following address:

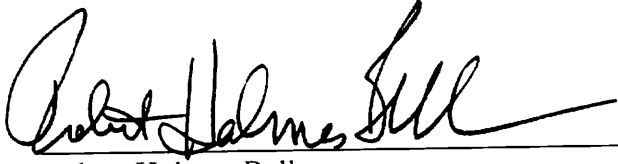
Ronald C. Weston, Clerk of Court
United States District Court
399 Ford Federal Building
110 Michigan, N.W.
Grand Rapids, MI 49503

If public comments are received, the Court will consider further amendments in response thereto.

The Clerk shall forthwith furnish a copy of this order to the Judicial Council of the Sixth Circuit and the Administrative Office of the United States Courts.

FOR THE COURT:

Dated: October 5, 2007



Robert Holmes Bell
Chief Judge

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

COMMENTARY TO AMENDED LOCAL CRIMINAL RULE 32.2(h)

(October 2007)

As a result of the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), the federal Sentencing Guidelines are advisory. In formulating a sentence, the district court must now consider the advisory guidelines, as well as the factors set forth in 18 U.S.C. § 3553(a). After *Booker*, the appellate courts have recognized two types of departures: (1) a departure authorized by the Sentencing Guidelines under section 5, part K; and (2) a non-guidelines departure based on application of the factors set forth in section 3553(a), also known as a "variance." See *Rita v. United States*, 127 S. Ct. 2456, 2461 (2007); *United States v. Husein*, 478 F.3d 318, 329 (6th Cir. 2007).

Local Civil Rule 32.2 governs the procedures leading up to sentencing, with a view to allowing both the government and defendant to make a clear record of their respective positions on all sentencing issues and affording the Court ample time to consider those positions. At present, the local rule requires any party seeking a departure under the guidelines to embody that request in a motion filed at least five business days before sentencing. The court has determined that careful consideration of all sentencing issues requires that any party seeking a variance under the section 3553(a) factors likewise provide notice of that request to the opposing party and the Court by motion. To assure that requests for departure and variance come to the Court's attention, the amendment requires that the motion clearly identify in the caption that a departure or variance is sought.